

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Board on Universal)	CC Docket No. 96-45
Service)	
)	
)	

Comments of the Public Utility Commission of Texas

On October 16, 2002, the Federal-State Joint Board on Universal Service (Joint Board) released a *Recommended Decision* addressing issues from the *Ninth Report and Order* that were remanded by the United States Court of Appeals for the Tenth Circuit.¹ In its *Recommended Decision*, the Joint Board recommended that the Federal Communications Commission (Commission) modify the non-rural high-cost support mechanism implemented in the *Ninth Report and Order* by adopting additional measures that would establish specific inducements for states to ensure that rates in all regions of the nation are reasonably comparable to rates in urban areas. Specifically, the Joint Board recommended the following: (1) continued use of a national average cost benchmark based on 135% of the national average costs; (2) funding 76% of state average costs exceeding the national benchmark; (3) establishing a national rate benchmark based on a percentage of the national average urban rate; (4) implementing state review and certification of rate comparability; and (5) providing states the opportunity to demonstrate that

¹ *Federal-State Joint Board on Universal Service, Ninth Report & Order and Eighteenth Order on Reconsideration*, 14 FCC Rcd. 20432 (1999) (Ninth Report and Order).

further federal action is needed because current federal support and state actions together are insufficient to yield reasonably comparable rates.² (§ 10)

The Public Utility Commission of Texas (Texas PUC), having been given general regulatory authority over public utilities within our jurisdiction in Texas, hereby submit these comments in response to the Joint Board's recommendations relating to: (3) the establishment of a national rate benchmark based on a percentage of the national average urban rate; and (4) implementation of state review and certification of rate comparability.

National Rate Benchmark and State Certification of Rate Comparability

The Commission invited comment on the Joint Board's recommendation relating to the expansion of the current annual certification process under Federal Telecommunications Act (FTA) § 245(e) to require States to certify that the basic service rates in high-cost areas³ served by eligible telecommunications carriers (ETCs) within the State are reasonably comparable to a national rate benchmark.⁴ The Joint-Board recommended that the Commission base the national rate benchmark on the most recent average urban residential rate in the Wireline Competition Bureau's (Bureau) *Reference Book*.⁵ Based on the most recent survey on basic local telephone rates conducted by the Bureau, the average urban rate for residential flat-rate service is \$21.84.⁶

² *In the Matter of Federal-State Joint Board on Universal Service*, FCC 02J-2 at 7 (2002) (Recommended Decision).

³ Recommended Decision at 23 ("For purposes of this state certification process, the Joint Board recommends that high-cost areas be defined as all wire centers with a line density of less than 540 lines per square mile").

⁴ *Id.* at 23.

⁵ *Id.* at 24.

⁶ *Id.* at 23.

The Texas PUC believes that the Joint Board's *Recommended Decision* regarding state certification procedures relating to rate comparability would have no direct impact on Texas due to the current level of rates, rate control laws and regulations, and rate setting concept in Texas. The Texas PUC notes that its current high-cost, rural rates for basic local telecommunications service would be below the Commission's national rate benchmark. Specifically, the Texas PUC notes that the monthly per-line rural rate for residential service in Texas is approximately \$17.00⁷ in comparison to the \$21.84 average urban rate for residential, flat-rate service that was derived by the Bureau. The Texas PUC points out that its rates for basic local telecommunications services are based on a value-of-service concept, which results in rates that are lower in high-cost, rural areas than urban areas in the State. Even so, the urban rate for residential service of approximately \$20.00⁸ in Texas would also be below the Bureau's \$21.84 average urban rate for residential, flat-rate service. Therefore, the rates in both urban areas and high-cost, rural areas in Texas would be below the Commission's national rate benchmark. Furthermore, the Texas PUC notes that non-rural carriers within the State receive only a small amount of support from the federal universal service fund (FUSF).

In addition, the Texas PUC points out that it currently has mechanisms to ensure reasonable rates in both rural and urban areas in the State. Specifically, the Texas PUC notes that provisions of Public Utility Regulatory Act (PURA),⁹ Chapter 58, establish a price cap for

⁷ SBC's rural rate in Texas for rate group 1 is \$8.15 for residential customers plus line charges, taxes, fees, and other related surcharges.

⁸ SBC's urban rate in Texas for rate group 8 is \$11.05 for residential customers plus line charges, taxes, fees, and other related surcharges.

⁹ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001-64.158 (Vernon 2000 & Supp. 2003) (PURA).

basic network service rates of companies electing incentive regulation, which provision basic local telecommunications service to a large majority of the customers in the State.

The Texas PUC believes that the Commission should consider the potential burden that such state certification procedures could present to state commissions. Particularly, the Commission should consider the amount of staff resources that are necessary to fulfill the state certification requirement.

Conclusion

We appreciate the opportunity to offer our comments in this proceeding. The Texas PUC believes that the Commission should consider the burden that state certification procedures regarding rate comparability could present to state commissions. The Texas PUC further encourages the Commission to recognize the existing mechanisms that currently ensure reasonably comparable rates in rural and urban areas in Texas.

Respectfully submitted,

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December 19, 2002

/original signed/

**Rebecca Klein
Chairman**

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**Brett A. Perlman
Commissioner**

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**Julie Caruthers Parsley
Commissioner**